
IN THE MATTER OF:

FARMERS IMPLEMENT COMPANY

Washington County, IA

ADMINISTRATIVE CONSENT ORDER

NO. 2008-AQ- **15**

NO. 2008-SW- **12**

TO: Joseph McConnell, Registered Agent
Farmers Implement Company
P.O. Box 867
211 W. Washington
Washington, IA 52353

Ronald Farrier, President
Farmers Implement Company
2495 Hwy 92
Washington, IA 52353

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Farmer's Implement Company (Farmers Implement) for the purpose of resolving an issue pertaining to the open burning of combustible materials and improper solid waste disposal. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Mark Heiderschit, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, IA 52353
Phone: (319) 653-2135

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the director to issue any order necessary to

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secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Farmers Implement is an implement company that sells farm and garden machinery, commercial and industrial machinery, and provides repair and maintenance services. The facility is located at 2495 Hwy 92, Washington, Iowa (Section 22, T-75-N, R-7-W, Washington Township, Washington County).

2. On November 30, 2005, DNR Field Office 6 received a complaint stating that cardboard was being burned at the Farmers Implement facility creating smoke and odors objectionable to the neighbors.

3. On December 13, 2005, Brent Earley, environmental specialist for DNR Field Office 6, investigated the November 30, 2005 complaint. Mr. Earley spoke with Ron Farrier, manager of Farmers Implement. Mr. Farrier stated that the boxes being burned originated from products delivered to the facility. Mr. Farrier also questioned if recyclable materials could be set out for pick up service. In response to this question, Mr. Earley contacted Mark's Sanitation and Recycling, a local sanitation service provider. Mr. Redlinger of Mark's Sanitation and Recycling confirmed that he provided garbage pickup services for Farmers Implement and that recyclable materials could also be picked up and delivered to the recycling center free of charge.

4. On December 16, 2005, Farmers Implement was issued a Notice of Violation letter for open burning. The letter also informed Mr. Farrier that if Farmers Implement was found to be in violation of the open burning rules in the future, the matter would be referred for appropriate enforcement action.

5. On May 1, 2008, field staff from DNR Field Office 6 were driving by the Farmers Implement facility and observed smoke. The field staff responded and investigated. At the time of the investigation, a pile containing pallets and miscellaneous material was observed being burned. Photographs were taken to document observations. Mark Heiderscheid, environmental specialist for DNR Field Office 6, met with a Farmers Implement employee, Alan Byerly. Mr. Heiderscheid provided Mr. Byerly copies of DNR rules regarding improper disposal and burning of trade waste.

6. On May 2, 2008, Farmers Implement was issued a Notice of Violation letter for open burning and improper solid waste disposal. The letter also informed Farmers Implement that the matter was being referred to legal services for further enforcement action.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapter 20-34 relating to air quality.
2. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). On May 1, 2008, DNR Field Office 6 personnel observed a pile containing pallets and miscellaneous material being burned at Farmers Implement. The burning does not fall under 567 IAC 23.2(2) exemptions and the burning of trade wastes is specifically prohibited. The above facts demonstrate a violation of this provision.
3. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Farmers Implement allowed the disposal of pallets and other trade wastes by burning the waste rather than recycling or disposing the waste at a sanitary landfill. The above facts demonstrate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Farmers Implement agrees to do the following:

1. Pay a penalty of \$2,500.00 within 30 days of the date from which the Director signs this administrative consent order;
2. Cease all open burning of waste at this site or any other site in the State; and
3. Ensure that all solid waste is properly disposed of in accordance with the solid waste rules.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

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2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$2,500.00. The administrative penalty is determined as follows:

Economic Benefit – Farmers Implement saved time and money by not properly disposing of the waste at a permitted facility. Based on what was being burned, it appears that the economic benefit was minimal. Therefore, no amount is assessed for this factor.

Gravity – The improper disposal and burning of trade waste, including tires, plastics, and manufactured wood products releases harmful toxins into the air such as carbon monoxide, dioxin/furans, hydrochloric acid, volatile organic compounds, heavy metal and fine particulate. Open dumping also impacts the environment, the character of the neighborhoods, and the quality of life of local residents. The open burning and improper solid waste disposal violations threaten the integrity of the environmental regulations. Therefore, \$1,250.00 is assessed for this factor.

Culpability – Due to a previous complaint investigation, Farmers Implement should have been fully aware of the rules regarding proper solid waste disposal. Therefore, \$1,250.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS


This administrative consent order is entered into knowingly and with the consent of Farmers Implement. For that reason Farmers Implement waives its rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section “V. Order” of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section “IV. Conclusions of Law” of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section “IV. Conclusions of Law” of this administrative consent order but which may arise from the facts summarized in Section “III. Statement of Facts” of this administrative

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consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 18 day of
June, 2008.



AUTHORIZED AGENT
Farmers Implement Company

Dated this 11 day of
June, 2008.

Con 10-6 Washington County ;Kelli Book; Mark Henderscheit; VI.C; VII.C.1